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| 10/696,963  | 10/30/2003  | Richard C. Bellofatto JR. | 059863/0040                   | 8469                   |
| 66197 7590 07/31/2007<br>HINCKLEY, ALLEN & SNYDER, LLP<br>43 NORTH MAIN STREET<br>CONCORD, NH 03301 |             |                           | EXAMINER<br>MOHANDESI, JILA M |                        |
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/696,963  
Filing Date: October 30, 2003  
Appellant(s): BELLOFATTO ET AL.

**MAILED**

**JUL 31 2007**

**Group 3700**

William A. Loginov  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 05/09/2007 appealing from the Office action mailed 10/13/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The statement of the status of claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The summary of claimed subject matter contained in the brief is correct.

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

The copy of the appealed claims contained in the Appendix to the brief is correct.

2002/0121322

SEAMON

9-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Seamon (Pub. No. US 2002/0121322). Seamon discloses a padfolio having an exterior pocket along an exterior cover comprising: a pair of opposing covers joined together by a spine

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on an edge of each of the opposing covers; the exterior pocket being located on an exterior surface of one of the opposing covers, wherein the pocket is formed by a flap (11) joined along a base edge, the base edge being joined the exterior surface adjacent to the spine; the flap including a front edge un-joined to the exterior surface and thereby capable to receive documents through the front edge, the flap further including two side edges, each side edge having a recess taper (as shown in Figure 2 embodiment the area above the straps 14 where there is no connecting material, form recesses in the side edges) which will partially reveal whether at least a single document is held within the pocket while the flap is tensioned against the exterior surface; and a pair of elastic strips (Figures 2-4 clearly depict accordion straps 14, which common sense implies would be for the purpose of allowing the exterior pocket to be stretched out so the contents could be removed easily. Furthermore, Seamon in paragraph [0010] discloses that the exterior pocket can be an open pocket having no closure, therefore the logical conclusion and as depicted in the Figures would be that the accordion strap 14, is in fact elastic in order to prevent the exterior pocket from hanging open all the time and spilling out the contents un-avoidably, but meantime would allow the exterior pocket to be stretched out so the contents could be easily removed. Even when the exterior pocket has a closure such as a zipper as shown in Figure 2 embodiment, the only logical conclusion from the Figure would be that the accordion strap 14 is indeed elastic and would go back to its original length once the zipper is being closed to prevent the accordion strap from being caught in the zipper) connected between each side edge, respectively, to prevent the exterior surface, the elastic strips generating tension and

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being constructed and arranged to maintain a holding friction against the documents, and the front edge and the two side edges being unattached to the cover except by a pair of elastic strips while a region in which documents may be viewed is visible along the side edges remote from the straps. Seamon discloses that the pocket can be an open pocket having no closures, i.e. can be maintained in its un-extended position without a closure. Note the base piece (inner wall 15) defining a perimeter seam with respect to a surrounding surface of the business accessory. See Figures 1-4 embodiments.

The pocket of Seamon clearly appears to be tapered between a wider length at the base edge and a narrower length at the front edge, see Figure 1 embodiment. With the pocket having no closures the side edges will inherently have a recessed shape that can reveal the item being held therein.

With respect to claim 22, Seamon clearly discloses the gap between the outer perimeter edge and the side edge to be narrower at the base edge and wider at the front edge.

Claims 21-25 are rejected under 35 U.S.C. 103(a) as being obvious over Seamon. If there is any doubt that the flap of Seamon is tapered and the gap between the outer perimeter edge and the side edge to be narrower at the base edge and wider at the front edge, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shape of the flap as a matter of obvious design choice, since such a modification would have involved a mere change in the

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shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

With respect to the gap being generated by an angle between approximately 2 and 5 degrees and the size of the gap, it would have been an obvious matter of design choice to modify the angle and size of the gap, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

#### **(10) Response to Argument**

Contrary to applicant's argument the pocket of Seamon does not need a zipper to close the pocket and it will stay in its un-extended position without any closure, see paragraph [0010] of Seamon.

Contrary to applicant's argument that Seamon does not disclose elastic strips, Figures 2-4 of Seamon clearly depict accordion straps 14, which common sense implies would be for the purpose of allowing the exterior pocket to be stretched out so the contents could be removed easily. Furthermore, Seamon in paragraph [0010] discloses that the exterior pocket can be an open pocket having no closure, therefore the logical conclusion and as depicted in the Figures would be that the accordion strap 14, would in fact be elastic in order to prevent the exterior pocket from hanging open all the time and spilling out the contents un-avoidably, but meantime would allow the exterior pocket to be stretched out so the contents could be easily removed. Even when the exterior pocket has a closure such as a zipper as shown in Figure 2 embodiment, the only

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logical conclusion from the Figures would be that the accordion strap 14 is indeed elastic and would go back to its original length once the zipper is being closed to prevent the accordion strap from being caught in the zipper.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that the instant application is for holding documents, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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